
**Criminal Justice & Corrections
Committee**

HB 1135

Brief Description: Expanding the DNA identification system.

Sponsors: Representatives Miloscia, O'Brien, Kirby, Clibborn, Chase, P. Sullivan and McIntire.

Brief Summary of Bill

- Expands the DNA identification system to include information from all persons convicted for gross misdemeanors and patronizing a prostitute.
- Expands the DNA identification system to include information from all persons arrested for felonies, gross misdemeanors, and patronizing a prostitute.
- Imposes penalty assessments that must be deposited into the DNA Data Base Account.
- Expands the permissible uses for funds from the DNA Data Base Account and provides for reimbursement of account surpluses.

Hearing Date: 1/25/05

Staff: Jim Morishima (786-7191).

Background:

The Washington State Patrol (WSP) operates and maintains a deoxyribonucleic acid (DNA) identification system. The purpose of the system is to help with criminal investigations and to identify human remains or missing persons. County and city jails are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. The Department of Corrections and the Department of Social and Health Services are responsible for collecting biological samples for DNA analysis from offenders incarcerated in their facilities. Local police and sheriff's departments are responsible for collecting biological samples for DNA analysis from offenders who do not serve any term of incarceration.

I. Types of offenders in the DNA identification system

The DNA identification system contains DNA samples from persons convicted of any felony and the following gross misdemeanors: stalking, harassment, and communicating with a minor for immoral purposes.

II. How the samples may be used

Biological samples may only be used for identification analysis and prosecution of criminal offenses or for the identification of human remains or missing persons. The results from biological samples may be submitted to the Federal Bureau of Investigation (FBI) combined DNA index system.

III. Funding

A sentencing court must impose a fee of \$100 for the collection of a DNA sample upon every offender convicted of a felony unless such a fee would result in undue hardship on the offender. The fee is a legal financial obligation and is payable only after payment of all other legal financial obligations in the sentence. The fee is deposited in the DNA Data Base Account. Only the chief of the WSP may make expenditures from the account. Moneys from the account may only be used for the creation, operation, and maintenance of the DNA data base.

Summary of Bill:

I. Types of offenders in the DNA identification system

The DNA identification system is expanded to include DNA information taken from the following adults and juveniles:

- Adults and juveniles convicted of any gross misdemeanor and patronizing a prostitute (a misdemeanor); and
- Adults and juveniles arrested for any felony, any gross misdemeanor, or patronizing a prostitute.

Beginning on January 1, 2006, local law enforcement agencies must start collecting biological samples from arrested persons. The samples must be forwarded to the WSP for analysis. This requirement does not apply if the state does not reimburse the local law enforcement agencies for the sample collection costs.

The WSP must analyze biological samples it receives from local governments unless a profile for the person in question is already in the system. The biological sample must be retained through the disposition of the underlying criminal case that caused the sample to be taken. A state patrol may only place a searchable DNA profile in the DNA identification system after the person has been charged with a crime.

If the person is convicted, the WSP must retain the biological sample and DNA profile. However, the WSP must destroy the biological sample and delete the DNA profile if:

- The person is not charged within the applicable charging period;
- The accused has been found not guilty or has been acquitted of any offense that would require a biological sample to be collected;
- The underlying conviction has been reversed and the case dismissed.

A person who prevails in a court action for misuse or unauthorized retention of a biological sample or DNA profile shall be awarded all costs, including reasonable attorney fees. In addition, the court must award a minimum of \$1,000 or \$10 for each day of the violation, whichever is greater.

II. How the samples may be used

The WSP may send a searchable DNA profile to the FBI for a one-time keyboard search, but may only be entered in the combined DNA index system after the accused has been found guilty and all right of appeal has lapsed, been waived, or been exhausted.

III. Funding

Persons found to have been convicted of a traffic infraction other than a parking offense must pay an assessment equal to 5 percent of the fine associated with the infraction. The assessment may not be waived or reduced. The assessment must be deposited in the DNA Data Base Account.

Persons found guilty of a crime in superior court must pay an assessment equal to 10 percent of the penalty or fine imposed for the conviction. This assessment must be deposited into the DNA Data Base Account.

The uses of the DNA Data Base Account are expanded to include:

- Biological sample analysis;
- Biological sample collection costs, including reimbursement to local law enforcement;
- Costs related to identifying and destroying biological samples;
- Costs related to developing and implementing a system that can identify whether persons have a pre-existing sample in the DNA data base; and
- Costs relating to testing crime scene DNA evidence.

Reimbursing local law enforcement for biological sample collection costs must be given priority. Beginning in 2010, the chief of the WSP is authorized to proportionately redistribute account surpluses back to the local governments that contributed to the account. The local governments may only use the surplus funds for forensic DNA related programs.

Appropriation: None.

Fiscal Note: Requested on January 19, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.